

CHARLES STEWART

IBLA 76-442

Decided August 4, 1976

Appeal from order of Administrative Law Judge John R. Rampton, Jr., dismissing appeal from cancellation of grazing privileges and rejection of application for transfer of grazing privileges. Idaho I-3-76-1.

Affirmed.

1. Grazing Permits and Licenses: Base Property (Land): Ownership or Control -- Grazing Permits and Licenses: Base Property (Land): Transfers -- Grazing Permits and Licenses: Cancellation or Reduction

Under 43 CFR 4115.2-1(e)(8), loss of ownership or control of base property results in the termination of grazing privileges based on such property so that thereafter it is not possible to obtain a transfer of the privileges to other property owned by the lessee.

2. Grazing Permits and Licenses: Cancellation or Reduction -- Mistakes: Generally -- Regulations: Waiver

Even if it be established that the Department had not applied in other cases regulation 43 CFR 4115.2-1(e)(8), which requires termination of grazing privileges upon loss of ownership or control of base property, such failure to apply the regulation is not authority to further disregard the regulation.

3. Administrative Authority: Estoppel -- Administrative Practice:
Estoppel -- Estoppel -- Grazing Permits and Licenses: Cancellation or
Reduction -- Mistakes: Generally -- Regulations: Waiver

Prior recognition of grazing privileges based on licensee's erroneous statement of ownership of base property does not estop the Department from cancelling the privileges when it becomes aware of the facts.

APPEARANCES: Eugene L. Bush, Esq., Sharp, Anderson & Bush, Idaho Falls, Idaho, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Charles Stewart appeals from an order of Administrative Law Judge John R. Rampton, Jr., dated January 15, 1976, dismissing an appeal from the decision of the District Manager of the Idaho Falls Grazing District, and rejecting appellant's application for the transfer of grazing privileges from the NE 1/4, section 17, T. 10 N., R. 35 E., B.M., Idaho, to other land, and canceling those grazing privileges.

Appellant once owned the base property to which these privileges were attached. By instrument dated March 1, 1968, appellant and his wife conveyed the base property to Hoggan Bros., a partnership. The Department did not become aware of this conveyance until an investigation after appellant filed an application on June 6, 1975, for transfer of the grazing privileges to other land. Appellant was mailed a notice dated July 18, 1975, to show cause why his grazing privileges should not be canceled, but no response was made. On August 26, 1975, the transfer application was rejected and appellant's grazing privileges were canceled.

In his appeal to the Board, appellant argues that the grazing rights were not intended to pass in the 1968 transaction and that the transaction is incomplete, that the purchasers therein do not intend to engage in livestock ranching, that appellant owns other property adjacent to the leased property while the base property is some 6 miles distant, that if the federal land is leased to another, extensive fencing will be required, that appellant has used the privileges and paid required fees, that cancellation is not in accord with the intent of the law, and that appellant is discriminated against and the Department is estopped from cancellation. Appellant further asserts he "has shown good cause for his failure to respond to the notice of cancellation."

[1] Appellant's failure to respond, however, was not the reason for the cancellation. The sale of the land in 1968 brought into operation regulation 43 CFR 4115.2-1(e)(8), which requires in part as follows:

If a licensee or permittee loses ownership or control of:

(i) All or part of his base property, the license or permit, to the extent it was based upon such lost property, shall terminate immediately without further notice from the District Manager; except that, if the licensee or permittee notifies the District Manager, in writing, of such loss within thirty days from the date thereof, such license or permit shall terminate to that extent at the end of the grazing season or grazing year as the District Manager shall determine * * *. [Emphasis added.]

Appellant's grazing privileges thus terminated automatically upon sale of the base lands in 1968. Since the base property was thereafter not under his ownership or control, he was not able to obtain a transfer of base property qualifications to his other property under 43 CFR 4115.2-2. 1/ Although appellant has contended that

1/ Section 4115.2-2 provides in part:

"(a) Transfer of base property; effect. (1) A transfer of a base property or part thereof, whether by agreement, operation of law, or testamentary disposition, will entitle the transferee, if qualified under § 4111.1-1, to so much of the grazing privileges as are based thereon. Except as otherwise herein provided [exceptions not applicable], the existing license or permit and the grazing privileges thereunder shall automatically and without further notice be terminated or decreased by such transfer to the extent of the grazing privileges attaching to the transferred base property * * *.

"(2) A transferee shall, within 90 days from the date of transfer, file with the District Manager documentary evidence of the transfer and an application on a form approved by the Director for a license or permit, active or nonuse, for the grazing privileges based thereon. Failure to comply with these requirements may result in the loss of the qualifications of the base property transferred * * *.

"(b) Transfer of base property qualifications; limitations; consent of owner or encumbrancer; effect. (1) A licensee or permittee may request the transfer of the recognized qualifications of base property then owned or controlled by him to other property owned or controlled by him, or to property owned or controlled by another person or persons qualified in accordance with § 4111.1-1 * * *." [Emphasis added.]

the "sale with mortgage back" was viewed by the parties as an "incomplete transaction," he did not show how he retained ownership or control over the base property. Despite appellant's contention that he did not intend to sell the grazing privileges with the property, he was not entitled to retain grazing privileges based on his former holdings. Glen L. Hutchinson, A-27786 (August 31, 1959). After the 1968 sale of the base property, it was the new owner who, for 90 days, had the right to apply for a license under section 4115.2-2(a)(2).

[2, 3] Appellant points out that the Department continued his grazing privileges and granted an earlier application for a partial transfer of the privileges to another party. 2/ He asserts that cancellation of the grazing privileges makes him "the subject of discrimination * * * in that other rights equally subject to cancellation have been transferred to a third party who has not been served to with any notice of cancellation." Appellant further argues that the government should be estopped from canceling the grazing privileges because of the earlier approval of a partial transfer of the privileges. But even if it be established that a controlling regulation had not been applied in other cases, such a failure to apply the regulation is not authority to further disregard the regulation. Mary Nan Spear, 25 IBLA 34 (1976). Moreover, prior acts of the Department recognizing appellant's privileges could only have been based on appellant's erroneous certification that he owned the base property. 3/ The Department's erroneous acceptance of appellant's prior claims of ownership does not estop the Department from taking appropriate action when the facts are brought to its attention. See United States v. Johnson, 23 IBLA 349 (1976).

Appellant's other arguments have been reviewed, but do not change the result required by the mandatory nature of the regulation. The regulation is a reasonable implementation of the grazing laws. While the District Manager acted as required in canceling appellant's lease, that action does not prevent appellant from reapplying for such lands. Cf. Alan G. Haigh, 18 IBLA 242 (1974).

2/ On December 7, 1973, the Area Manager approved appellant's application for the transfer of 250 AUM's of Federal range privileges to the base property of others from the base property which was sold in 1968.

3/ Despite the fact that appellant had executed a conveyance of the base property, and notwithstanding the warning on the application forms regarding 18 U.S.C. § 1001 (1970), appellant on both his 1973 and 1975 applications certified that he owned the base property.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joseph W. Goss
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Frederick Fishman
Administrative Judge

